

MUNICIPALITIES AND COUNTIES 30 § 2257

position virtually conceded that plaintiff's continued employment was entirely contingent upon town's continued participation in program. *McNally v. Mokarzel* (1978) Me., 386 A.2d 744.

Defendant individual town council members were absolutely immune concerning manner of termination of plaintiff's position as town's code enforcement officer which arose out of a quasi-judicial act and allegedly conducted

in a tortious manner, notwithstanding that plaintiff alleged that defendant individual town council members had acted with malice, absent further pleadings and demonstration that town council members had been acting in other than a quasi-judicial capacity with reference to their conduct toward plaintiff, even though plaintiff alleged that defendants had acted in their individual as well as their official capacities. *Id.*

§ 2256. Municipal functions

In addition to those offices and departments required by general law, a municipality may provide, by ordinance, for the performance of all necessary municipal functions. Except where specifically provided by statute, municipal charter or municipal ordinance, the municipal officers shall appoint all town officials and employees required by general law, by municipal charter or by municipal ordinance and may remove such officials and employees for cause, after notice and hearing. Unless otherwise specified, the term of all municipal officials shall be one year.

1979, c. 218, § 2, eff. May 14, 1979.

1979 Amendment. Chapter 218, in 2nd sentence, inserted "municipal charter" in two places.

§ 2257. Personnel records

1. **Confidential records.** The following records shall be confidential and not open to public inspection, and shall not be "public records" as defined in Title 1, section 402, subsection 3:

A. Working papers, research materials, records and the examinations prepared for and used specifically in the examination or evaluation of applicants for employment by that municipality;

B. Municipal records containing the following:

(1) Medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;

(2) Performance evaluations and personal references submitted in confidence;

(3) Information pertaining to the credit worthiness of a named employee;

(4) Information pertaining to the personal history, general character or conduct of members of an employee's immediate family; and

(5) Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action shall no longer be confidential after it is completed; and

C. Other information to which access by the general public is prohibited by statute.

2. **Employee right to review.** The municipal officer shall, on written request from an employee or former employee, provide the employee, former employee or his duly authorized representative with an opportunity to review his personnel file, if the municipal officer has a personnel file for that employee. These reviews shall take place at the location where the personnel files are maintained and during normal office hours. For the purposes of this subsection, a personnel file shall include, but not be limited to, any formal or informal employee evaluations and reports relating to the employee's character, credit, work habits, compensation and benefits which the municipal officer has in his possession. The records described in subsection 1, paragraph B, may also be examined by the employee to whom they relate, as provided in this subsection.

1979, c. 403, § 3.

1979 Amendment. Repealed and replaced by c. 403.

LD1289 - AS printed
1981

FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1289

H. P. 1092 House of Representatives, March 13, 1981
Referred to the Committee on Labor. Sent up for concurrence and ordered
printed.

EDWIN H. PERT, Clerk

Presented by Representative Hobbins of Saco.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Clarify the Laws Pertaining to Municipal Personnel Records.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 30 MRSA § 2257, sub-§ 1, ¶ B, first ¶, as enacted by PL 1979, c. 403, § 3, is repealed and the following enacted in its place:

Municipal records pertaining to an identifiable employee and containing the following:

Sec. 2. 30 MRSA § 2257, sub-§ 1-A is enacted to read:

1-A. **Written decision to employee. Neither dismissal nor other disciplinary action may be imposed without providing the affected employee, and placing in his personnel records, a final written decision of the action, which decision shall state the conduct or other facts on the basis of which dismissal or other disciplinary action is being imposed and the conclusions of the acting authority as to the causes for such action.**

STATEMENT OF FACT

Section 1 makes it clear that Title 30, section 2257, subsection 1, paragraph B, was not intended to refer to municipal records in general, but only to records pertaining to named employees. Section 2 would give employees the right to a

written statement of reasons for any disciplinary action taken against them. This statement would become the final written decision pertaining to disciplinary action and, therefore, part of the public record.

L.D. 1289

STATE OF MAINE
HOUSE OF REPRESENTATIVES
110TH LEGISLATURE
FIRST REGULAR SESSION

(Filing No. H-355)

COMMITTEE AMENDMENT "A" to H.P. 1092, L.D. 1289, Bill, " AN ACT to Clarify the Laws Pertaining to Municipal Personnel Records."

Amend the bill by striking out all of section 2 and inserting in its place the following:

'Sec. . 2. 30 MRSA §2257, ¶B, sub-¶(5), as enacted by PL 1979, c. 403, §3, is amended to read:

(5) Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action shall no longer be confidential after it is completed. The decision shall state the conduct or other facts on the basis of which disciplinary action is being imposed and the conclusions of the acting authority as to the causes of the need for that action; and'

Statement of Fact

This amendment retains the requirement in section 2 of the bill that a written decision to take disciplinary action against a municipal employee must contain the conduct or facts on which the decision is based and conclusions as to the causes of the need for disciplinary action. The amendment deletes from the bill the requirement that the written decision be placed in the employee's

COMMITTEE AMENDMENT "A" to H.P. 1092, L.D. 1289

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personnel record.

Reported by the Majority of the Committee on Judiciary.
Reproduced and distributed under the direction of the Clerk
of the House.

5/11/81

(Filing No. H-355)

1366 shall be equipped with and have lighted a lamp on the front which shall emit a white light visible from a distance of at least 200 feet to the front and a red reflector to the rear which shall be visible at least 200 feet to the rear. Bicycle, **motorized bicycle or tricycle** pedals shall bear reflector strips and bicycle, **motorized bicycle or tricycle** handlebars shall bear reflector tapes when in use in the nighttime or at other times when motor vehicles are required to display headlamps by section 1366. Every bicycle, **motorized bicycle or tricycle** shall be equipped with a brake which shall enable the operator to stop the bicycle, **motorized bicycle or tricycle** within a reasonable distance.

Sec. 8. 29 MRSA § 1963, as amended by PL 1975, c. 731, § 55, is further amended by adding at the end a new sentence to read:

The operator of a moped, motorized bicycle or tricycle shall be subject to all the penalties within this Title.

Sec. 9. 29 MRSA § 2506, sub-§ 6, as enacted by PL 1981, c. 117, § 5, is repealed.

Sec. 10. 29 MRSA § 2506, sub-§ 7 is enacted to read:

7. Motorized bicycle or tricycle. Motorized bicycle or tricycle, as defined in section 1, subsection 5-B.

Effective September 18, 1981

CHAPTER 345

H. P. 1092 — L. D. 1289

AN ACT to Clarify the Laws Pertaining to Municipal Personnel Records.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 30 MRSA § 2257, sub-§ 1, ¶ B, first ¶, as enacted by PL 1979, c. 403, § 3, is repealed and the following enacted in its place:

Municipal records pertaining to an identifiable employee and containing the following:

Sec. 2. 30 MRSA § 2257, ¶ B, sub-¶ (5), as enacted by PL 1979, c. 403, § 3, is amended to read:

(5) Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action shall no longer be confidential after it is completed. **The decision shall state the conduct or other facts on the basis**

of which disciplinary action is being imposed and the conclusions of the acting authority as to the causes of the need for that action; and

Effective September 18, 1981

CHAPTER 346

H. P. 1214 — L. D. 1382

AN ACT to Clarify the Statutory Provisions for the Registration of Motor Vehicles in Maine.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 29 MRSA § 1, sub-§ 10-D is enacted to read:

10-D. Resident. "Resident" means all legal residents of this State, all persons who have declared or established residence in this State and any person who accepts employment or engages in a trade, profession or occupation in this State for a period of at least 6 months. Any foreign person having a place of business in this State shall be deemed to be a resident as to all vehicles owned or leased and which are garaged or maintained in this State, or in the case of foreign persons in the business of renting you-drive or you-haul vehicles as to an apportioned share of their fleet based upon the mileage of all vehicles of the owner operated in this State bears to the total mileage of all vehicles of the owner operated both within and without the State.

Sec. 2. 29 MRSA § 102, first sentence, as repealed and replaced by PL 1975, c. 770, § 138, is further amended to read:

Except as section 2243 provides for reciprocity with other states, any resident person, firm or corporation, or owner as defined in section 1, who fails to register any vehicle to be operated, caused to be operated or remain on any way in this State shall be guilty of a misdemeanor.

Effective September 18, 1981

CHAPTER 347

H. P. 1266 — L. D. 1481

AN ACT Concerning Insurance Proceeds under the Maine Insurance Code.

Be it enacted by the People of the State of Maine, as follows:

Recod. of Title 30

A. The chairman shall call meetings of the board as required. The chairman shall also call meetings of the board when requested to do so by a majority of the members or by the municipal officers. A quorum of the board necessary to conduct an official board meeting must consist of at least a majority of the board's members. The chairman shall preside at all meetings of the board and be the official spokesman of the board.

B. The secretary shall maintain a permanent record of all board meetings and all correspondence of the board. The secretary is responsible for maintaining those records which are required as part of the various proceedings which may be brought before the board. All records to be maintained or prepared by the secretary are public records. They shall be filed in the municipal clerk's office and may be inspected at reasonable times.

C. The board may provide, by regulation which shall be recorded by the secretary, for any matter relating to the conduct of any hearing, provided that the chairman waives any regulation upon good cause shown.

D. The board may receive any oral or documentary evidence but shall provide as a matter of policy for the exclusion of irrelevant, immaterial or unduly repetitious evidence. Every party has the right to present the party's case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct any cross-examination that is required for a full and true disclosure of the facts.

E. The transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceeding, constitute the record. All decisions become a part of the record and must include a statement of findings and conclusions, as well as the reasons or basis for the findings and conclusions, upon all the material issues of fact, law or discretion presented and the appropriate order, relief or denial of relief. Notice of any decision shall be mailed or hand delivered to the petitioner, the petitioner's representative or agent, the planning board, agency or office and the municipal officers within 7 days of the board's decision.

F. The board may reconsider any decision reached under this section within 30 days of its prior decision. The board may conduct additional hearings and receive additional evidence and testimony as provided in this subsection.

G. Any party may take an appeal, within 30 days after the decision is rendered, to Superior Court from any order, relief or denial in accordance with the Maine Rules of Civil Procedure, Rule 80B. This time period may be extended by the court upon motion for good cause shown. The hearing before the Superior Court shall be without a jury.

4. Jurisdiction. Any municipality establishing a board of appeals may give the board the power to hear

any appeal by any person, affected directly or indirectly, from any decision, order, regulation or failure to act of any officer, board, agency or other body when an appeal is necessary, proper or required. No board may assert jurisdiction over any matter unless the municipality has by charter or ordinance specified the precise subject matter that may be appealed to the board and the official or officials whose action or nonaction may be appealed to the board. Any board of appeals shall hear any appeal submitted to the board in accordance with Title 28-A, section 1054.

SUBCHAPTER VI

MUNICIPAL EMPLOYMENT

§2701. Employee probation periods

Except as specifically provided otherwise by charter or ordinance, any reference to cause and hearing in this Part only applies to an employee who has completed a reasonable probation period established by the municipality. Periods of probation may not exceed 6 calendar months or the length of time in effect in a municipality on January 1, 1984, whichever is greater.

§2702. Personnel records

1. Confidential records. The following records are confidential and not open to public inspection. They are not "public records" as defined in Title 1, section 402, subsection 3. These records include:

A. Working papers, research materials, records and the examinations prepared for and used specifically in the examination or evaluation of applicants for employment by that municipality;

B. Municipal records pertaining to an identifiable employee and containing the following:

(1) Medical information of any kind, including information pertaining to diagnosis or treatment or mental or emotional disorders;

(2) Performance evaluations and personal references submitted in confidence;

(3) Information pertaining to the credit worthiness of a named employee;

(4) Information pertaining to the personal history, general character or conduct of members of an employee's immediate family; and

(5) Complaints, charges or accusations of misconduct, replies to those complaints, charges or accusations and any other information or materials that may result in disciplinary action. If disciplinary action is taken, the final written decision relating to that action is no longer confidential after it is completed. The decision shall state the conduct or

other facts on the basis of which disciplinary action is being imposed and the conclusions of the acting authority as to the reasons for that action; and

C. Other information to which access by the general public is prohibited by law.

2. Employee right to review. On written request from an employee or former employee, the municipal official with custody of the records shall provide the employee, former employee or the employee's authorized representative with an opportunity to review the employee's personnel file, if the municipal official has a personnel file for that employee. These reviews shall take place during normal office hours at the location where the personnel files are maintained. For the purposes of this subsection, a personnel file includes, but is not limited to, any formal or informal employee evaluations and reports relating to the employee's character, credit, work habits, compensation and benefits which the municipal official may possess. The records described in subsection 1, paragraph B, may also be examined by the employee to whom they relate, as provided in this subsection.

§2703. Residency requirement; ordinances and collective bargaining

A municipality may not enact any ordinance which requires employees to reside within the boundaries of the municipality as a condition of employment, nor may collective bargaining agreements contain these strict requirements. A municipality may negotiate collective bargaining agreements or, if the municipality does not engage in collective bargaining, enact ordinances that require employees to reside within a specified distance or a specific response time of a facility where those provisions represent a legitimate job requirement, and provided that the ordinances do not apply to employees already employed when the ordinance takes effect.

This section applies only to public employees, as defined in Title 26, section 962, subsection 6.

§2704. Mandatory retirement age prohibited

1. Legislative findings and intent. The legislative findings and intent for this section are the same as the findings and intent specified in Title 5, section 4575, subsection 1.

2. Prohibition. A municipality may not enact any ordinance or adopt any regulation which requires a municipal employee, as a condition of employment, to retire at or before a specified age or after completion of a specified number of years of service.

3. Criteria and standards. A municipality may establish reasonable criteria and standards of job performance to be used for the purpose of determining when the employment of municipal employees should be terminated. These criteria and standards are subject to

all of the provisions included under Title 5, section 4575, subsection 2.

4. Normal retirement age. This section shall not be construed to prohibit the use of a "normal retirement age," as defined in the United States Employee Retirement Income Security Act of 1974, Public Law 93-406, as amended, in computing pension or retirement benefits, provided that normal retirement age and the accrual or awarding of pension or retirement benefits may not be used in any way to require the retirement of an employee or to deny employment to a person.

5. Federal requirements. This section shall not be construed to affect or limit any power or duty relating to pension or retirement plans which the Federal Government reserves to itself.

CHAPTER 125

MUNICIPAL RECORDS

§2751. Short title

This chapter shall be known and may be cited as the "Municipal Records Law."

§2752. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Record. "Record" means all documentary material, regardless of media or characteristics, made or received and maintained by a municipality in accordance with law or regulation or in the transaction of its official business.

§2753. General requirements

The following provisions apply to municipal records.

1. Omissions or errors corrected. When omissions or errors exist in municipal or school district records, they shall be corrected under oath by the person whose duty it was to make them correct, whether or not that person remains in office.

2. Safe or vault for preservation. Each municipality shall provide a fireproof safe or vault for the preservation of all completed record books. When a record book is completed, the clerk shall deposit it in the safe or vault where it shall be kept, except when required for use.

3. Attestation. The records of the clerk may be attested by volume. Each document is sufficiently attested when the volume in which it is recorded bears an attestation with the written signature of the clerk.

4. Delivery to successor in office. Municipal officials shall deliver the records of their office to their successors in office when their terms expire.